

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.CR.C. No. 1334 of 2019**

Anil Kushwaha, S/o. Ayodhya Kushwaha, Aged About 21 Years, R/o. Mendhari, Semariyapara, Police Station-Basantpur, District Balrampur-Ramanujganj Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh, Through : Station House Officer, Police Station Basantpur, District Balrampur- Ramanujganj Chhattisgarh.

---- Respondent

For Applicant : Mr. Amarnath Pandey, Advocate

For State/respondent : Mr. Samdarsh Nirankari, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board**29/03/2019**

1. This is the second bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested in connection with Crime No.104/2017, registered at Police Station – Basantpur, District – Balrampur – Ramanujganj (C.G.), for the offence punishable under Section 363, 366, 376 (2-ढ), 323, 376 (2-ञ) 368, 342/34 of the Indian Penal Code and Section 3 (2-5) 3 (2) ढ Scheduled Caste and Scheduled Tribes (Protection of Atrocities) Act and Section 5 ढ /6, 17 of Protection of Children from Sexual Offences Act, 2012. The first bail application was dismissed for want of prosecution on 14.12.2018 in M.Cr.C.

No.8756/2018.

2. It is submitted by the learned counsel for the applicant that the applicant has been falsely implicated in this case. The prosecutrix in this case had been a consenting party and the evidence so far recorded before the trial Court, it is established that the prosecutrix was not below the age of 18 years on the date of incident. Ramdayal (P.W.-5), the father of the prosecutrix has made statement in his cross-examination, which shows that age of the prosecutrix on the date of incident was about 19 years. Therefore, it is prayed that the applicant may be enlarged on bail.
3. On the other hand, learned counsel for the State opposes the bail application submitting that the evidence before the trial Court can not be appreciated for the purposes of grant of bail. Hence, the application be rejected.
4. I have heard the learned counsel for both the parties and perused the case diary.
5. The allegation against the applicant is this that he abducted the minor prosecutrix of age about 14 years and by keeping her in confinement in his place exploited her sexually for sometime before she was recovered from his possession. Hence, this case.
6. The prosecution case is based on the fact that the prosecutrix was merely of age about 14 years. The admission made by the father of the prosecutrix by itself does not sufficient to hold that the trial on the point of age has been concluded. It is true that the witness has made some admission in his cross-examination, but which of his statement is true is yet to be appreciated, on which basis conclusion will be drawn by the

trial Court, which can not be done by this Court for the purpose of grant of bail. Hence, for this reason this Court is of the opinion that present is not a fit case, in which, the applicant should be enlarged on regular bail.

7. Accordingly, the bail application filed under Section 439 of the Cr.P.C. is rejected.

Certified copy as per rules.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram